



**TENNESSEE REGULATORY AUTHORITY**

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Sara Kyle, Chairman  
Lynn Greer, Director  
Melvin Malone, Director

**K. DAVID WADDELL**  
Executive Secretary

May 2, 2002

Joelle L. Phillips, Esq.  
BellSouth Telecommunications, Inc.  
333 Commerce Street  
Suite 2101  
Nashville, Tennessee 37201-3300

**RE: In the Matter of Rulemaking Amendment of Regulations for Telephone Service Providers**

**Docket No. 00-00873**

Dear Ms. Phillips:

This is in response to your letter of May 1, 2002, in which you requested clarification regarding the inclusion of the above-referenced docket on the agenda for the May 7, 2002 Authority Conference.

As you know, the Authority published proposed rules regarding service standards for telecommunications service providers in Tennessee in October 2000. After a rulemaking hearing and extended comment period, at the request of the industry the Authority held three workshops, on January 16, January 30, and February 20, 2001, at which members of the industry, a representative of the Consumer Advocate, and members of the Authority staff discussed the proposed rules in great detail. The Authority also received extensive written comments prior to the workshops from a number of affected companies regarding the proposed rules.

On August 16, 2001, the Authority publicly circulated a revised version of the proposed rules taking into account information gleaned from the workshops. This revised version reflected modifications of the rules as originally published in October 2000. Since the publication of the revised version of the rules in August 2001, the Authority has received additional written comments from members of the industry and the Consumer Advocate

regarding the proposed rules. Members of the Authority staff have also had informal discussions with members of the industry regarding the proposed rules.

The proceedings just described constitute the notice and comment phase of this rulemaking, and this phase is now complete. Prior to the Directors' deliberations on approval, a final version of the proposed rules will be publicly circulated and submitted to the Directors for approval, subject to any modifications the Directors may determine are needed. When the Directors have made their determination regarding approval of the proposed rules, this rulemaking as a whole will be finished.

It is our position that the process that has been provided in this rulemaking is more than adequate to satisfy the requirements of the Uniform Administrative Procedures Act, Tenn. Code Ann. § 4-5-201 *et seq.* The Authority has afforded all affected persons ample notice of the Authority's proposed amendments to the service standard rules and ample opportunity to comment regarding those rules. No further proceedings are required in this rulemaking.

On October 26, 2001, BellSouth filed written comments regarding the August 16, 2001 revised version of the rules in which BellSouth proposed its own revision as reflected in a "redline" version attached to the filing. BellSouth indicated that this "redline" version was based on an industry consensus. On December 5, 2001, BellSouth filed a letter in which BellSouth "urges the Authority to either implement the proposed regulations as revised and submitted by the industry or grant an evidentiary hearing." BellSouth stated that such a hearing "would provide the TRA the opportunity for scrutiny of the factual basis for the standards proposed by the TRA Staff."

On the grounds that no further proceedings, other than final publication and consideration of the proposed rules, are necessary in this rulemaking, the Authority has not scheduled an evidentiary hearing. The rulemaking provisions of the Uniform Administrative Procedures Act do not require that such a hearing be held, and the Authority does not consider such a hearing to be necessary. The Authority has considered the comments of BellSouth and other members of the industry, as well as the Consumer Advocate, while formulating final revisions.

Nevertheless, the Authority will provide BellSouth and other members of the industry the opportunity to provide oral comments to the Directors at the May 7, 2002 Authority Conference. This opportunity for oral comments is not a hearing, as your May 1, 2002 letter suggests. The Authority is making this time available to members of the industry strictly as a courtesy, and in doing so the Authority does not consider further notice and comment proceedings necessary or required as part of this rulemaking.<sup>1</sup>

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<sup>1</sup> BellSouth's reliance on *U.S. Life Title Insurance Co. of New York v. Department of Commerce and Insurance*, 770 S.W.2d 537 (Tenn. App. 1988), is misplaced. That case does not support the proposition that members of the industry are entitled to an evidentiary hearing as part of this rulemaking. The *U.S. Life* case holds that persons potentially affected by an agency rulemaking must receive notice of the rulemaking, including the proposed rules that are the basis thereof. In this rulemaking, affected members of the industry have received the required notice, as discussed by the Court of Appeals in *U.S. Life*.

In addition, the Authority is posting, today, the most recent draft of the proposed rules on its Internet site in order that members of the industry have this draft in advance of the May 7, 2002 Authority Conference. This version of the rules may not be identical to the final version to be considered by the Directors at a later Authority Conference.

The Authority emphasizes that this posting of a draft of the rules does not in any way constitute a publication or republication of the proposed rules. This posting does not obligate the Authority to conduct any further proceedings in this matter; it is an extraordinary action that is not required as part of this rulemaking. As explained above, with respect to this rulemaking, the notice and comment phase that is required by statute is complete.

I hope that this serves to clarify the Authority's position with regard to the opportunity for oral comments to be provided at the May 7, 2002 Authority Conference.

Sincerely,

A handwritten signature in black ink, appearing to read "K. David Waddell". The signature is stylized, with a large "K" and "W" and a smaller "D" in the middle.

K. David Waddell  
Executive Secretary

cc: Chairman Kyle  
Director Greer  
Director Malone  
Interested Parties